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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/672,020	09/27/2003	Billy Ray Delp		7685

7590 02/24/2006

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EXAMINER

AMERSON, LORI BAKER

ART UNIT	PAPER NUMBER
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3764

DATE MAILED: 02/24/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/672,020

Applicant(s)

DELP, BILLY RAY

Examiner

L. Amerson

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). • Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 23 January 2006.
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-3 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 27 September 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

***Response to Arguments***

1. Applicant has made a note of the pending status of 841 days for the prosecution of their application. The Examiner expresses an apology on behalf of the office for the seemingly unusual delay. The average pendency of an application is approximately 24 months, due to a large backlog of new cases. When an application has been granted 'special' status, every effort is made to review the application in an expeditious fashion. The PTO is working diligently to reduce this rate by accelerating their hiring plan of examiners over the new few years. We appreciate your continued patience.

***Claim Objections***

2. The claim(s) are narrative in form and replete with indefinite and functional or operational language. The structure, which goes to make up the device, must be clearly and positively specified. The structure must be organized and correlated in such a manner as to present a complete operative device. The claim(s) must be in one sentence form only. Note the format of the claims in the patent(s) previously cited.

3. Applicant's arguments filed 1/23/06 have been fully considered but they are not persuasive. Regarding claim 1, Hunker discloses an exercise device (10) in Figure 4 that attaches under a door and is used for performing lower body exercises, particularly sit-up exercises. The device has a handle (18) attached to a cord (13; column 3, lines 55-56) or "tether". The Examiner interprets the cord as being a "other suitable material" replacement for a chain since a chain is flexible, and thus a cord is flexible as well. The cord attaches to a foot retainer (12), which holds down the feet of a user via an anchor

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(11). In response to applicant's argument that Hunker, "does not permit a person to perform a true sit-up", and "his intended use is not the same", and "his device cannot be used under any piece of furniture", applicant should note that a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. Regarding the intended use of Hunker, Hunker discloses in column 3, lines 34-37 that the device is used for sit-ups or any other variety of lower body exercises [column 2, line 61]. Hunker also discloses that the device attaches underneath a door. Additionally, since the anchor of the device [Hunker] comprises a channel, it is capable of being attached underneath furniture options such as a sofa or desk. Hunker meets all of the limitations of the instant invention as recited in independent claim 1. The rejection stands.

4. Applicant's arguments, see paragraph 2, line 3, filed 1/23/06, with respect to the Mayer reference not "designed to reduce the abdomen" have been fully considered and are persuasive. The rejection of claim 1 by Mayer has been withdrawn.

5. Applicant's arguments filed 1/23/06 have been fully considered but they are not persuasive. Regarding claim 1, Lui discloses in Figure 1 an exercise device that attaches "at the foot of a bed" and is primarily used to aid a person doing sit-ups. Regarding the language, "but is also of benefit to other muscles of the human body" has not been given patentable weight because the recitation is purely functional in nature and does not recite any structure. As broadly claimed, Lui discloses a handle (4)

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attached to a strap (1', 1") or "tether" which attaches to a foot retainer (3) for holding down the feet. The Examiner interprets the strap as being "other suitable material" replacement for a chain since a chain is flexible, and thus a strap is flexible as well. The device of Lui is anchored by a bed (figs. 16-17). In an Office Action mailed 10/19/05, the applicant was advised to provide arguments pointing out disagreements with the examiner's contentions and to discuss the references applied against the claims, explaining how the claims avoid the references or distinguish from them. Applicant's arguments filed 1/23/06 do not comply with this requirement. Applicant's argument vaguely suggest the arrangement of the Lui reference where the device "hooks under a mattress and the straps come over the ankle with the retainer under the ankle" and furthermore suggesting recommendations for how the Liu patent could be better "accomplished with a piece of rope" and putting the device under the springs instead of a mattress. Applicant has not pointed out disagreements with the examiner's contentions and has not discussed the references applied against the claims, explaining how the claims avoid the references or distinguish from them. Furthermore, applicant should note that a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. Lui meets all of the limitations of the instant invention as recited in independent claim 1. The rejection stands.

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6. Applicant's arguments filed 1/23/06 have been fully considered but they are not persuasive. Regarding claim 2, Tardif discloses in Figure 1 an exercise device that attaches to "other overhead stationary anchors", as claimed in the instant invention, and to aid a person in doing pull-ups (Figure 12), which enhance the muscles of the arms. Tardif also discloses exercises to benefit other muscles in the human body (figures 4-11, 13-18). Tardif discloses a device having a sling support (50) or "handle" attached to a cord (20) or "tether", which attaches OVER a door via the anchor (40) via the cord. In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., "device fit under a door", and "device being used for sit-ups") are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). Furthermore, Applicant argues that a wood door frame will not support a full size man. Tardif shows in Figure 12, a user exercising and being supported by a door frame. Applicant provides additional remarks in item #4, lines 3-7 of the Remarks that are not relevant to the prosecution of the instant invention. Tardif meets all of the limitations of the instant invention as recited in independent claim 2. The rejection stands.

7. Applicant's arguments filed 1/23/06 have been fully considered but they are not persuasive. Regarding claim 3, Hern discloses an exercise device (10) in Figure 4 that attaches to a stationary anchor (41) on the floor. The device aids a user for performing sit-ups (column 3, lines 63). The device is adapted for attachment to a stationary

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anchor (column 1, line 16) and is portable and readily movable from one location to another (column 1, lines 34-36). In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., "does not strap around the chest, "anchor the back of a chair" "does not use elastic") are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). Applicant has broadly recited an exercise device attachable to a stationary anchor. Hern meets all of the limitations of the instant invention as recited in independent claim 3. The rejection stands.

### ***Conclusion***

8. **Claims 1-3 are rejected. THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to L Amerson whose telephone number is (571) 272-4971. The examiner can normally be reached on Mon.-Fri from 9-6 p.m. Interviews Tue. and Thur..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gregory Huson can be reached on 571-272-4887. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, appearing to read "Lori Amerson", with a stylized, cursive script.

Lori Amerson